

## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 AT&amp;T CORP,

No. C-07-02440 (EDL)

11 Plaintiff,

**ORDER DENYING MOTIONS TO  
DISMISS**

12 v.

13 DATAWAY INC,

14 Defendant.

15

16 AT&T Corporation (“AT&T”) and Dataway, Inc. (“Dataway”) both filed motions to dismiss  
17 which came on for hearing on January 15, 2008. Having read all the papers submitted and carefully  
18 considered the relevant legal authority, the court hereby DENIES both motions for the reasons stated  
19 at the hearing.

20 AT&T filed a complaint pursuant to 47 U.S.C. § 203 of the Federal Communications Act, 47  
21 U.S.C. 201, et seq. (“Federal Communications Act”). AT&T claims that it billed Dataway for  
22 telecommunication calls and related services and claims that payment is due. Dataway moved to  
23 dismiss the complaint. For the reasons stated at the hearing, the Court finds that it has jurisdiction,  
24 that venue is proper, that service was sufficient, and that the complaint states a claim.

25 AT&T also moved to dismiss the first, second, third, and fifth claims for relief of the  
26 Counterclaim of Dataway for failure to state a claim under Rule 12(b)(6). As stated at the hearing,  
27 AT&T did not demonstrate that the federal tariff requirements preempt the state causes of action  
28 here, as neither party addressed the ramifications of the detariffed telecommunications marketplace.  
See, e.g., Ting v. AT&T, 319 F.3d 1126 (9th Cir. 2003). As stated at the hearing, this denial is

1 without prejudice to reconsidering these issues in future dispositive motions.

2 **IT IS SO ORDERED.**

3  
4 Dated: January 16, 2008

*Elizabeth D. Laporte*

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5 ELIZABETH D. LAPORTE  
6 United States Magistrate Judge